

Imposing such limitations on Heli USA's activities with the Hualapai Nation would not promote the goals of Public Law 100-91 – the National Parks Overflights Act – which expresses Congress' concern about “[n]oise associated with aircraft overflights at the Grand Canyon National Park.” 16 U.S.C. § 1a-1 note. Heli USA does not conduct “overflights” of the Grand Canyon National Park; rather, as described below, it provides flights to and from the Hualapai Nation, with which Heli USA has a business relationship intended to increase tourism to Hualapai Nation's lands. Heli USA was granted a Form 7711-1 certificate because of its relationship with the Hualapai Nation and the nature of the flights and services it provides to the Tribe. Heli USA, therefore, requests that the FAA clarify in writing that the Proposed Rule's limitations are not intended to apply to Heli USA's flights to the Hualapai Nation.

I. **Introduction and Background on Heli USA's Operations**

Heli USA is a small business, incorporated under the laws of the State of Nevada and based in Las Vegas. Heli USA employs seventy-nine people, including seven members of the Hualapai Nation, and owns and operates seven helicopters. Since 1994, Heli USA has been transporting tourists from Las Vegas to the Hualapai Reservation at the western edge of the Grand Canyon National Park (GCNP or the Park). All of Heli USA's flights originate in Las Vegas and land at approved sites outside the GCNP Special Flight Rules Area (“SFR4”) on the Hualapai Reservation. Heli USA's flights enter the SFRA at its western edge and for a very short period – only about 4 minutes one way – and fly the FAA's Green 4 Route. During the entire flight, Heli USA's pilots cross only a tiny portion of the GCNP, less than ¼ mile from entry to exit. This portion of the Park is on the extreme western edge, and by all accounts is seldom visited, even by backcountry users. Additionally, the lower end of the Colorado River within the Park, which is located on this western edge, is frequented by boaters and jet skiers moving upstream from the Lake Mead National Recreation Area. These motorized recreation devices create a significant amount of noise in the western edge of the Park. The return flights to Las Vegas exit over Hualapai backcountry and never enter the SFRA or the Grand Canyon National Park.

Heli USA historically has made its flights through this sliver of the SFRA pursuant to an FAA Form 7711-1 “Certificate of Waiver or Authorization” issued by the FAA Las Vegas Flight Standards District Office. Heli USA first obtained a Form 7711-1 certificate when it purchased Silverado Helicopters, Inc. The FAA had issued the Form 7711-1 certificate to Silverado Helicopters, Inc. on September 19, 1994. This Form 7711-1 certificate is attached as Attachment 3. Heli USA received its most recent Form 7711-1 certificate (Attachment 2) on April 29, 1999. This Form 7711-1 certificate generally authorizes “flight operations within the SFRA”.

As the FAA has formally recognized in issuing these Form 7711-1 certificates, Heli USA's flights are in support of the developing economy of the Hualapai Nation. Heli

USA and its predecessor have been making flights to the Hualapai Nation since 1994 under these certificates.

**In** 1996, the Hualapai asked Las Vegas tour companies to submit business plans that could help the Nation develop its economy. Eventually the Tribe approved Heli USA's plan to bring customers to its lands, and we have made substantial investments in equipment, employees, and marketing efforts in reliance on that relationship. Since then, our business plan has been increasingly successful and profitable for us and for the Hualapai Nation.

Heli USA does not conduct Grand Canyon overflights for tourists; our business is focused exclusively on flights to the Hualapai reservation. Our customers come from all over the world, and, although they are excited to see a small portion of the Grand Canyon, the key reason that they choose our flights is the destination: the Hualapai reservation. The Tribe's members are heavily involved in providing services to our customers. They provide meals, visits to Native American sites, dancing exhibitions and other traditional Native American cultural experiences, and river guide services.

The culture and history of the Hualapai Nation – once regarded by many white Americans as valueless – are now a valuable resource that can attract travelers from all over the world. Their reservation lands – once regarded by the American nation in its westward migration as unproductive and useless – are **now** recognized as a priceless resource. **The Hualapai were once relegated to their place in the Grand Canyon; now it is their right to use these lands.**

The Hualapai are committed to developing their tourism business in a careful and dignified way that is respectful of their traditions and culture and does not crassly commercialize their special places. Our business with them is conducted entirely in areas designated by them for tourism development; these amount to a small portion of their lands. All tourism sites are located far away from Native American sacred sites and homes. Further, the land set aside for tourism is managed carefully to protect its scenic and natural values.

It goes without saying that Heli USA's interest in the Hualapai is primarily a financial one, but that does not change the fact that the Tribe has the right to develop its sovereign economy and that its needs desperately to do so. **In** the course of our dealings with the Tribe, our dealings have grown beyond a purely business relationship. We are friends with the Hualapai people. They are our employees and business partners. We wish them well, and hope to contribute to a prosperous future for them. We consider ourselves a productive and responsible corporate member of their community, and as a result believe that our loyalty to them and our responsibilities to them extend beyond making money. In all that we do with them, we try to make that feeling evident.

The Hualapai Nation would earn significant fees from us just from allowing us to land ~~on~~ their property, but our relationship with them has resulted in much more than that. In addition to the Hualapai who work for Heli USA directly, many more are employed by the Tribe's business enterprise to provide the services described above. Other self-employed Tribe members make traditional arts and crafts to sell to our customers. Our business creates these opportunities for the Hualapai.

Again, our business always has involved the Hualapai. Although Heli USA could seek to offer services not involving the Hualapai Nation, both parties would not do nearly as well. Heli USA brings people from around the world to the unique and endangered world of the Hualapai. This brings economic opportunity to their door that they desperately need, and importantly, that they have invited. **In** return, they give our customers a glimpse of their culture and history. This is the key element of our business. We could not duplicate the experience of visiting with the Hualapai in any other way. Their contribution of place, culture, and tradition makes our business unique; Heli USA is not simply another company that markets tours to the Grand Canyon area; rather, Heli USA markets the Hualapai Nation to the world, with the added benefit of the beauty and environment of the American Southwest. In this respect, our flights are very literally in support of the Hualapai Nation.

The FAA's apparent belief that Heli USA's transport of tourists to the Hualapai reservation falls within the scope of the Proposed Rule is erroneous. Applying the Proposed Rule's limitations to Heli USA's activities would significantly limit the Hualapai Nation's opportunity for self-governance and economic autonomy and prosperity. The Proposed Rule indicates that Form 7711-1 certificate holders are excluded from the limitations included in the rule. Treating Heli USA's activities differently than other Form 771 1-1 certificate holders are treated cannot be justified and the FAA should clarify that the Proposed Rule is equally inapplicable to all Form 771 1-1 certificate holders.

Furthermore, if a legitimate basis existed for differentiating between Form 771 1-1 certificate holders, Heli USA still believes that fairness requires that the base year for allocations should not be May 1, 1997 to April 30, 1998. During that year, Heli USA made approximately 2,946 trips to the Hualapai Nation.<sup>1</sup> For that period we paid the Hualapai approximately \$200,000 for landing rights and for services provided by them to our customers. Limiting Heli USA's allocations to that year is unfair to the Tribe and to Heli USA. Heli USA was just beginning to execute its business plan between May 1997-April 1998, which was a very poor time for tourism from Asia — a mainstay of our business. These two factors make the 1997-1998 numbers drastically low compared to the

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<sup>1</sup> Heli USA originally reported 2,556 flights to the FAA. Recently completed audited financial statements support the higher number of flights. Heli USA will be amending its reports submitted under 14 C.F.R. §93.317 to reflect the new information.

business Heli USA conducts today. In 1999, we expect to make over 7,000 trips to the Hualapai Nation. Based on current data and projections for the remaining four months of 1999, Heli USA expects to pay over \$800,000 to the Hualapai for landing rights and services. These figures do not include the wages and benefits paid to our Hualapai employees. In the year 2000, Hualapai revenues from helicopter flights and associated tourism services will likely surpass \$1 ,000,000.

Obviously, limiting Heli USA to flights it made in 1997/1998 would dramatically impact our business and would have a similar dramatic impact on the Hualapai. Heli USA believes the National Parks Overflights Act – Public Law 100-91 – was never intended to be applied to interfere with the ability of the Hualapai Nation to develop its economy. Heli USA also believes that the FAA and the Park Service would not be accomplishing the overriding goal of Public Law 100-91 by attempting to restrict Heli USA's flights and similar flights to the Hualapai Nation. Heli USA flies from Las Vegas to the GCNP western area only. Its noise impacts on the GCNP, if any, are limited to a small portion of the Park on the extreme western edge near Lake Mead. Heli USA never flies further into or over the Park and, thus, does not contribute to the overflight noise issues in the central **portions** of the Park that have driven the controversy over air tours. Heli USA's landing sites are exclusively on Hualapai land. Thus, Heli USA's flights are not inconsistent with the statutory and regulatory goals of substantially restoring natural quiet to the Grand Canyon National Park. Indeed, by providing service that competes with companies who fly greater distances into and over the Park, Heli USA's business provides an attractive alternative to Park overflights, and, thus, is consistent with the oft-stated objectives of the FAA and the Park Service to limit aircraft noise in the Park without eliminating air visitors completely.

Heli USA believes that it does not engage in “commercial SRFA operations” and its flights – conducted as they are under long-established special authorization from the FAA – are not “commercial air tours” as those terms are defined in the Proposed Rule. As a result, Heli USA's flights should not be subject to the commercial air tour limitations contained in the Proposed Rule.

## **II. Heli USA's Flights Should Be Exempted From Any Proposed Flight Limitations.**

### **A. Heli USA's Flights Are Not “Commercial SFRA Operations” Under the Proposed Rule (and therefore also not “Commercial Air Tours”).**

As already noted above, Heli USA operates its flights to the Hualapai Nation based on special authorizations provided by the FAA on Form 771 I-1 certificates. The FAA has recognized in the Proposed Rule and its preamble that flights operated pursuant to Form 7711- 1 certificates are not commercial air tours and do not constitute commercial

SRFA operations. Therefore, Heli USA's flights should not be subject to the proposed limitations.

In the preamble, the FAA notes its assumption that "flights operated on the Blue, Black and Green routes that are reported to the FAA under [ 14 C.F.R.] § 93.317" are "commercial air tours" as that term is proposed to be defined in the Rule. 64 Fed. Reg. at 37307. The FAA, however, notes several exceptions and describes flights using Green 3 and operating under a Form 7711- 1 "in support of the Supai Village and the Havasupai Tribe," as such exceptions. *Id.* The FAA also assumes that most Brown route flights are operated pursuant to Form 771 1-1 certificates and are excepted from the Proposed Rule. *Id.* Though Heli USA is not specified, its flights along Green 4 similarly have been and are today operated pursuant to Form 771 1-1 certificates issued by the FAA and should, therefore, likewise be excepted from the Proposed Rule.

The Proposed Rule itself defines "Commercial SFRA Operation" as a broad term covering any flights made within the SFRA by an operator who is authorized to conduct air tours, but excluding "operations conducted under an FAA Form 7711-1." 64 Fed. Reg. at 37323 (proposed 14 C.F.R. § 93.303). Though the proposed definition of "commercial air tour" does not contain the same exclusion explicitly, the rule preamble makes clear that the term "commercial SFRA operation" is a broad category that includes "commercial air tours." 64 Fed. Reg. at 37307 ("This term is broader than the term "commercial air tour" as it includes air tours as well as transportation, repositioning, maintenance, and training/proving flights."). Thus by excluding Form 771 1-1 flights from the definition of "commercial SFRA operations," the FAA necessarily also excludes such flights from the definition of "commercial air tour." Under the Proposed Rule, Heli USA's flights would not be considered "commercial SFRA operations" because they are conducted pursuant to Form 7711- 1 certificates and, as a result, necessarily would not be "commercial air tours." Therefore, the proposed air tour allocations should not apply to Heli USA.

## **B. Heli USA's Flights Do Not Fit Within the Proposed Definition of "Commercial Air Tour."**

Even if the FAA amended these definitions or otherwise changed the relationship of these definitions in the final rule, Heli USA's flights do not fit within the FAA's proposed definition of "commercial air tour." The Proposed Rule defines "commercial air tour" to mean "any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing." 64 Fed. Reg. at 37323 (proposed 14 C.F.R. § 93.303). This definition is extremely broad and almost all-inclusive. 64 Fed. Reg. at 37307. As written, it could be applied to flights that never enter the GCNP SFRA. The FAA should review and narrow the definition appropriately to apply explicitly to GCNP overflights.

The broad definition is only somewhat clarified by the application of seven factors to be considered by the FAA in determining administratively whether a flight indeed constitutes a “commercial air tour.” 63 Fed. Reg. at 37323 (proposed 14 C.F.R. § 93.303). Using these seven factors to evaluate Heli USA’s flights, it is clear that they are not “commercial air tours” within the apparent scope of the definition.

- 1. Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire.** This factor should have a reference to “sightseeing of the Grand Canyon National Park.” Although a portion of Heli USA’s advertising does emphasize the flight to the Hualapai reservation which borders the Grand Canyon, the purpose of the flight is to make a visit to the Hualapai Nation. As such, this is not a sightseeing flight, but a transportation flight that includes sightseeing en route as a necessary by-product of the primary purpose of the flight. It is hard to imagine any flight to the Hualapai reservation, for whatever purpose, that would not involve incidental sightseeing along the way. It is also important to note that the great majority of the sightseeing done from the air in any Heli USA flight is outside the GCNP. It is not a purpose of Heli USA’s flights to see or fly over the GCNP. The sights include Las Vegas, Lake Mead, the Hualapai Nation lands, and other notable surface features that our pilots fly over on their way to the Hualapai Nation. During the entire one and one-half hour flight, our pilots spend a total of less than five minutes in the GCNP SFRA, and less than a minute of time over the Park itself. The return flight exits the area over Hualapai backcountry, and never flies through the SFRA at all.
- 2. Whether a narrative was provided that referred to areas or points of interest on the surface.** Heli USA’s flights do include a narrative, but as was just made clear in the discussion of Factor No. 1 above, the great majority of this narrative concerns surface features that have nothing to do with the GCNP and primarily concerns the upcoming Native American experience at the Hualapai Nation.
- 3. The area of operation.** Heli USA’s flights transport customers to and from the Hualapai reservation, at the extreme western edge of the Grand Canyon. The flights begin in Las Vegas and end at landing sights designated by the Hualapai Nation. These landing sites are outside the SFRA. The entire time spent in the SFRA is less than five minutes during the outbound flight, and return flights never enter the SFRA. The great majority of the one and one-half hour outbound flight occurs outside the SFRA. There is **no** overflight of the GCNP.
- 4. The frequency of flights.** In 1999, Heli USA expects to make 8695 flights. These flights begin in Las Vegas and end at the Hualapai Nation.

Customers on these flights disembark at the Hualapai reservation and have meals, attend cultural events, make rafting trips, or engage in other activities sponsored and provided by the Hualapai. There are no Park overflights.

**5. The route of flight.** Heli USA's flights enter the SFRA only for a short period of time – less than 5 minutes – at its extreme western edge. All such operations are conducted pursuant to Form 771 I-I certificates issued by the FAA.

**6. The inclusion of sightseeing flights as part of any travel arrangement or package.** Heli USA does include sightseeing flights as part of its tour packages, but its advertising makes clear that the destination of the flight is the Hualapai Nation, not the GCNP. But for Heli USA's transportation services, tourists would find it difficult to reach the Hualapai reservation. The flights are essentially a necessary part of accessing the Hualapai reservation.

**7. Whether the flight or flights in question would or would not have been cancelled based on poor visibility of the surface.** Heli USA transports passengers to the Hualapai reservation. As such, it does not cancel its flights based on surface visibility unless passenger or air safety requires it.

**C. Treating Heli USA's Flights as "Commercial Air Tours" Would Violate the Administrative Procedure Act.**

The FAA recognizes in the preamble that flights made in support of the Havasupai Tribe under Form **7711-1** certificates are not commercial air tours. 64 Fed. Reg. at 37307. Papillon Helicopters also makes flights to the Supai Village. The Proposed Rule also recognizes that these flights are excluded from the proposed limitations. Attached are copies of advertising material distributed by Papillon that demonstrates that its flights to the Supai Village are precisely of the same nature as flights made by Heli USA to the Hualapai Nation. Both companies transport passengers to and from Indian lands and provide incidental sightseeing services during the flight. Both companies fly pursuant to Form 771 I-I certificates issued by the FAA. There is simply no basis upon which to make a distinction between Papillon and Heli USA that would result in Heli USA's flights being restricted.

Heli USA believes that the FAA should clarify that all flights under Form 771 I-I certificates are excepted from the definition of "commercial air tours." As a result, the FAA should not impose the Proposed Rule's limitations on Heli USA's activities because they are of the same kind and for the same purpose as those the FAA specifically excludes from the Proposed Rule. Treating these identical flights differently would have no basis or support in law and would be arbitrary and capricious. Should it decide to treat these identical activities differently, the FAA must articulate a rational basis for its actions. Heli USA posits that there is and can be no rational basis for treating Heli USA differently from

other operators who make flights to Native American tribal lands in the GCNP area under Form 7711- 1 certificates.

Indeed, Heli USA's flights have much less impact ~~on~~ noise in the GCNP than do flights to the Supai Village and Havasupai lands. The Heli USA flights, which last one and one-half hours, utilize only a small portion of the Green Four route, totaling less than five minutes in the SFRA. The return flights do not enter SFRA at all, resulting in a total potential noise impact in the SFRA of about four minutes per three hours of flight time. All landings are on Hualapai lands outside the SFRA. In contrast, the Havasupai flights proposed to be excepted by the FAA cut right through the heart of a flight fee zone, flying in the zone for at least 40 minutes each way and landing at the bottom of the Canyon in the heart of the SFRA. Their literature shows that they offer narration and other sightseeing during the flights. Indeed, the Havasupai are paid separately by tourists; Papillion is paid only for its sightseeing trip. There simply is no rational basis for treating these flights differently. Indeed, if anything, the Heli USA flights should be favored, not disadvantaged, because they are for exactly the same purpose and have dramatically fewer impacts on the "quiet" resource the entire rulemaking is intended to restore.

The National Parks Overflights Act does contain an explicit exemption benefiting the Havasupai Tribe: "[Flight-free] **zones** shall be flight free except for purposes of administration and for emergency operations, including those required for the transportation of persons and supplies to and from the Supai Village and the lands of the Havasupai Indian Tribe." Overflights Act, § 3( b)( 1). This language, while it explicitly protects Havasupai supply and transportation flights, is not a rational basis for withholding the same protections from the Hualapai.

It is merely an accident of time and circumstance that the Hualapai are not mentioned and explicitly protected in this part of the statute. In 1987, when the National Parks Overflights Act was enacted, the western end of the Grand Canyon was only sparsely visited and could not compete with the central attractions – including the Supai Village – reachable from the popular and accessible South Rim of the Canyon. The Hualapai did not have the same economic interests to protect at that time, and could not foresee the advent of substantial international tourism to their Nation. The Hualapai did have a river rafting business in 1987, and Congress acted to protect it by forbidding the prohibition of flights solely for the purpose of transporting individuals to the Hualapai lands for rafting trips. National Parks Overflights Act, § 3(c).

Both of these provisions mandate particular protections for Native American economic activities, but they do not prohibit the FAA and the Park Service from offering additional protections in the context of these rulemakings. The United States Court of Appeals for the District of Columbia Circuit has emphasized in its review of the current SFAR that the FAA and Park Service have significant discretion to implement the congressional purposes of the Overflights Act. *See Grand Canyon Air Tour Coalition v.*

FAA, 154 F.3d 455 (D.C. Cir. 1998). Indeed, taken together, these provisions indicate a strong congressional concern that GCNP noise regulation not interfere with attempts at economic development by the region's Native Americans.

The FAA's discretion is broad, but not unfettered. To impose flight caps on Heli USA, it must articulate a rational basis for doing so when other substantially similar flights are not restricted. There would be simply no rational basis for treating Heli USA differently than other similarly situated carriers; imposing such flight restrictions on Heli USA would be arbitrary and capricious.

#### **D. The FAA's Past Regulatory Actions Are Inconsistent with Its Current Proposed Flight Restrictions**

The burden of establishing a rational basis is especially heavy when an Agency departs from its past consistent administrative practice. **In** this case, the FAA has acknowledged consistently in the past – since 1994 – the special status of Heli USA's flights to the Hualapai Nation by issuing Form 771 1-1 certificates to authorize them. As the GCNP SFRA Procedures Manual explains, Form 7711- 1 certificates constitute “special authorization” to fly in the SFRA, and will be granted “normally” only for the following purposes: (1) law enforcement, (2) fire fighting, (3) emergency medical treatment; (4) evacuation of persons in the vicinity of the Park; (5) support of Park maintenance or activities; or (6) aerial access to and maintenance of other property located within the GCNP SFRA. LAS FSDO Grand Canyon National Park Special Flight Rules Area Procedures Manual, Department of Transportation, Federal Aviation Administration at page 3-1 (November 1, 1998). Of these six purposes, the only one which describes Heli USA's flights (or Papillon's for that matter) is the sixth: “Aerial access to and maintenance of other property located within the GCNP SFRA.”

Since 1994 the FAA has accorded special status to flights to the Hualapai Nation, but now has proposed, without offering a rational basis or any basis whatsoever, to revoke that status. Although Heli USA has not received formal notice that its Form 771 1-1 certificates are revoked, the FAA's proposal to impose flight limitations would treat Heli USA's flights like any Canyon overflight, and would amount to a revocation of the special authorization with no explanation. Doing so would be fundamentally inconsistent with Heli USA's relationship with the Hualapai, with the FAA's **own** procedures manual and with the language of the proposed rule itself.

### **III. The Overflights Act (Public Law 100-91) Does Not Apply to Flights over Hualapai Lands**

The Overflights Act expresses Congress' concern about “[ n]oise associated with aircraft overflights at the Grand Canyon National Park.” § 3(a). Acting on its concerns, Congress required the Park Service to recommend measures to “provide for substantial

restoration of the natural quiet” in the Park from “overflights.” Overflights Act, § 3(b)(1). The FAA is required to promulgate these recommendations as made, except to the extent they must be revised to accommodate public safety concerns. *Id.* at §3(b)(2).

The language of the statute makes clear that Congress intended the agencies to regulate noise associated with overflights of the Grand Canyon National Park. Though the term “overflight” is not defined in the Act, it would be stretching the term beyond the limit of reasonableness to apply it to Heli USA’s flights. These flights are – and always have been – flights to and from the Hualapai Nation on the very western edge of the Grand Canyon, and outside the boundaries of the National Park. Heli USA’s flights never venture further east than the Hualapai Nation, and so cannot be part of the Park overflight problem Congress was trying to resolve.

Indeed, Heli USA would be affected by the proposed regulation principally because the FAA has included large portions of the Hualapai Nation in the GCNP SFRA, even though the Nation’s lands are not within the National Park boundaries. The Overflights Act gives the FAA no special authority to regulate indiscriminately the airspace *around* the Park, as it has done by including the Hualapai Nation in the GCNP SFRA and attempting to regulate all flight activity in the SFRA portion of the reservation. Rather, the Act specifically directs the FAA and the National Park Service to address noise “associated with aircraft overflights” of the Park. The agencies may, but are not required, by the Act, to take into account the economic impact of flight restrictions on aircraft operators in achieving the mandate of “natural quiet.” *See Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455,475 (D.C. Cir. 1998). Subjecting the Hualapai and their use of their sovereign lands to these stringent standards goes beyond the authority provided in the Overflights Act. While the Act clearly authorizes the agencies to regulate “overflights,” it does not authorize the agencies to regulate flights to and from Hualapai lands, which is exactly what the proposed restrictions would do.

Heli USA recognizes that the FAA has organic authority, in consultation with the Environmental Protection Agency, to regulate the noise impacts of aircraft flights. See 49 U.S.C. § 44715; *see also*, 61 Fed. Reg. 69302, 69306 (December 31, 1996). However, the authority provided by this statute is significantly different than the mandate of the Overflights Act. The FAA’s general noise regulatory authority does not require the stringent “restoration of the natural quiet;” rather it requires a finding of “necessity” to impose restrictions to protect public health and welfare for any noise regulation. Also, unlike the Overflights Act, FAA’s more general noise regulatory authority requires the Agency to consider whether its standards are economically reasonable and technologically practicable. 49 U.S.C. § 44715(b)(4).

Because the proposed restrictions, as they would apply to Heli USA and the Hualapai Nation, are in excess of the authority granted in the Overflights Act, the FAA may not promulgate them. Any noise regulation affecting Hualapai lands and flights over them

that are not Grand Canyon Park overflights must be promulgated, if at all, after consulting with the Environmental Protection Agency and applying the statutory standards considered at 49 U.S.C. § 44715(b).

We appreciate the opportunity to comment on the proposed limitations, and respectfully request that the FAA give careful consideration to our comments. We have attempted to limit our comments to those issues that would directly affect our company, and have tried to be as constructive as possible in our approach. As a precaution, we adopt by reference the comments submitted by other commenters on this proposed rule, and reserve our right to raise any such issues in future forums with the FAA and/or the Park Service. Please contact me at (702) 735-8787 with any questions you have about Heli USA's comments, or with news about the status of the proposed rule.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Turner', with a stylized flourish at the end.

Nigel Turner  
CEO, Heli USA Airways, Inc.





*Las Vegas*

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September 7, 1999

BY COURIER

Mr. Quentin J. Smith, Jr.  
Manager, Air Transportation Division, AFS-200  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Re: Response to FAA's Proposed Allocation of Grand Canyon Air Tour Flights to  
Heli USA Airways: Inc., 64 Fed. Reg. 37304 (July 9, 1999)

Dear Mr. Smith:

I write to respond to your letter of July 9, 1999, in which you proposed to limit Heli USA Airways to 2,556 commercial air tour flights per year, including 995 peak season flights. For the reasons stated below and in our enclosed comments on the proposed rule, Heli USA believes it should not be subject to the proposed air tour limitations. Heli USA does not conduct commercial air tours within the meaning of the definition in the proposed rule; therefore, its flights would not be limited by the proposed rule if finalized. Heli USA would appreciate a response clarifying that its flights are not commercial air tours and that the FAA will not seek to impose the limits proposed in your July 9, 1999 letter.

Heli USA requests that the FAA at least modify its allocation by changing the base year to May 1, 1998 – April 30, 1999, during which Heli USA flew and reported over 6,000 flights, or, if the FAA retains the current base year, to modify Heli USA's allocation to reflect the more accurate total of 2946 flights made during the base year of May 1, 1997 to April 30, 1998.

**I. Heli USA's Flights are Not "Commercial Air Tours."**

As explained in more detail in the enclosed proposed rule comments, Heli USA flies within the Grand Canyon National Park SFRA pursuant to special authorization granted by the FAA on a Form 7711-1 certificate for activities in support of the Hualapai Nation. These flights are not commercial air tours as defined in the proposed rule, and should not be subject to any allocations or other limitations imposed on commercial air tours.

In every important respect, Heli USA's flights are indistinguishable from those made by Papillon Helicopters to the Supai Village under a Form 771 I-I authorization issued by the FAA. Again, the enclosed comments contain a more detailed discussion and documentary evidence regarding the similarity of purpose of Heli USA's and Papillon's flights. The FAA has explicitly recognized that Papillon's flights are exempt in the proposed rule (see 64 Fed. Reg. at 37307), but has not done so for Heli USA's flights, despite their similarities. There is no rational basis for treating these flights differently, especially since the FAA in the past has recognized the special nature of Heli USA's flights by issuing Form 771 I-I certificates to authorize them. Because of their special status in support of the Hualapai Nation, Heli USA's flights should not be restricted as proposed in your letter.

## **II. The FAA's Selection of the 1997/1998 Base Year Does Not Reflect Current Operations.**

Though your letter emphasizes that the FAA will not change the 1997/1998 base year based on comments that demand has increased or that demand was off during the base year, it is important to note that for Heli USA, these factors make our proposed allocation grossly unrepresentative of our current business. In the reporting year 1998/1999, we reported over 6,000 flights to the Hualapai Nation, an increase of over 100% of flights during the proposed base year. The FAA's proposed base year was a very slow year for the air tour industry generally, as will be reflected in the increased trips reported by Heli USA and others in the industry for the most recent reporting year. Additionally, this was the first year of operations for us in our expanded business relationship with the Hualapai. Our enclosed comments describe that business relationship in more detail. We went to great lengths, as did the Hualapai, to obtain the concurrence of the FAA and the National Park Service in the Hualapai's economic development efforts. The result of that effort was the FAA's continued recognition of the special status of our flights, as evidenced by its issuance of a Form 771 I-I certificate permitting those flights on April 29, 1999.

We request that the FAA modify the base year to May 1, 1998 through April 30, 1999.

## **III. Heli USA Should Be Allocated At Least 2946 Flights, Including 1454 Peak Season Flights For Its 1997/1998 Base Year.**

Heli USA has recently discovered that it likely underreported flights during the 1997/1998 base year. Based on recently completed audited financial statements, we now believe that we made at least 2946 flights during the base year, and that 1454 flights were made during peak season. As the attached letters describe, the new reporting figures are based on an analysis of gross flight revenue. These revenues, when analyzed together with our average retail prices and average flight load factor for the period, show that we made more flights than were reported. Heli USA is amending its reports submitted pursuant to 14 C.F.R. §93.313 to reflect this new information.

Mr. Quentin J. Smith, Jr.  
September 7, 1999  
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Thank you for the opportunity to provide this information, and please call me at (702) 736-8787 if you have questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nigel Turner", with a stylized flourish at the end.

Nigel Turner  
CEO, Heli USA Airways, Inc.

FROM :

SEP. 7.1999 11:38AM

PHONE NO. :

ARTHUR ANDERSEN LLP

Nov. 17 1998 07:40AM P2

# ARTHUR ANDERSEN

September 7, 1999

Federal Aviation Authority  
800 Independence Ave. SW  
Washington, DC 20591

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Arthur Andersen LLP

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Suite 500 South  
3773 Howard Hughes Parkway  
Las Vegas NV 89109-0949  
702 836 8600

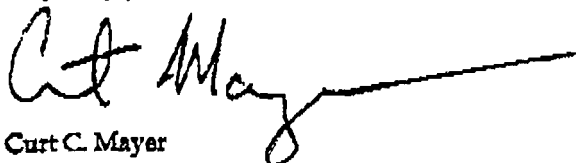
Dear Sirs:

This is to inform you that based on our audits of the combined balance sheets of Heli-USA Airways, Inc. and Jan Leasing LLC (collectively, the "Company") as of December 31, 1998 and 1997 and the related combined statements of operations, changes in stockholders' and members equity and cash flows for the years then ended, operating revenues for the years ended December 31, 1998 and 1997 for the Company were as follows:

	<u>1998</u>	<u>1997</u>
Operating Revenues	\$ 6,628,898	\$ 3,285,930

Should there be any questions, please feel free to call me.

Very truly yours,



Curt C. Mayer

FROM :

PHONE NO. :

Nov. 17 1998 07:41AM P3



Las Vegas  
Executive Air Terminal  
275 E. Tropicana Ave., Suite 240. Las Vegas, Nv 89109  
(702) 730 8787 Fax (702) 736 0835 E mail: heliusa@bellsouth.net

September 7, 1999

U.S. Department of Transportation **Docketers**  
**Docket** No. FAA -99-5927  
400 Seventh Street SW  
Room Plaza 401  
Washington, **D.C.** 20590

Re: Proposed Rule Commercial Air Tour, Limitation In the Grand Canyon National Park  
Special Flights **Rule Area**, 64 FED. REG. 37304 (July 9,1999).

Gentlemen:

After careful review of the **revenue** and number of flights the FAA have reported for Heli USA,  
the following differeacss have occurred:

The time **period** from May 1, 1997 to April 30, 1998 Heli USA's Gross **Revenue** for the flights  
completed along Green 4 was **\$3,314,370.00**.

Average retail price per passenger was **\$225.00** = 14,730 passengers flown.

Average load factor was 5 = 2,946 flights.

The FAA have reported us for 2,556 which results in a difference of 390 **flights**.

The time period from May 1, 1997 to September 30, 1998 the Gross Revenue for the flights  
completed along Green 4 was **\$1,636,000.00**.

Average retail price per passenger was **\$225.00** = 7,271 passengers flown.

Average load factor was 5 = 1,454 **flights**.

The FM have reported us for 995 which results in a difference of 459 flights.

The above information has been audited and **verified** by our outside accounting firm,

Arthur Andersen, **LLP**.

The reason for the differences could be the change of computer system software which resulted  
in incorrect information **being** submitted by our operations manager **in** the years of 1997/98.

Thank you for your immediate attention to **the** above matter, it is vital that the information is  
Corrected. If I can be of any further assistance please call Joyce **Clatterbuck**, Controller at  
**702-798-4354** ext 6.

**Respectfully,**

  
Joyce Clatterbuck  
Controller



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

## CERTIFICATE OF WAIVER OR AUTHORIZATION

ISSUED TO

Silverado Helicopters, Inc.

ADDRESS

115 East Reno Ave., Suite 1  
Las Vegas, NV 89119

This certificate is issued for the operations specifically described hereinafter. No person shall conduct any operation pursuant to the authority of this certificate except in accordance with the standard and special provisions contained in this certificate, and such other requirements of the Federal Aviation Regulations not specifically waived by this certificate.

OPERATIONS AUTHORIZED

Conduct operations within the Grand Canyon National Park Special Flight Rules Area in support of the Hualapai Indian Nation. This also allows the descent from SFAR 50-2, eastbound on Green 4 Route, and landing on Hualapai Indian land. Departures will rejoin Green 4 westbound.

Document No. 19 FSDO-015

LIST OF WAIVED REGULATIONS BY SECTION AND TITLE

None

### STANDARD PROVISIONS

1. A copy of the application made for this certificate shall be attached to and become a part hereof.
2. This certificate shall be presented for inspection upon the request of any authorized representative of the Administrator of the Federal Aviation Administration, or of any State or municipal official charged with the duty of enforcing local laws or regulations.
3. The holder of this certificate shall be responsible for the strict observance of the terms and provisions contained herein.
4. This certificate is nontransferable.

NOTE.—This certificate constitutes a waiver of those Federal rules or regulations specifically referred to above. It does not constitute a waiver of any State law or local ordinance.

### SPECIAL PROVISIONS

Special Provisions Nos. 1 to 3 inclusive, are set forth on the reverse side hereof.

This certificate is effective from September 19, 1994 to Continuous, inclusive, and is subject to cancellation at any time upon notice by the Administrator or his authorized representative.

BY DIRECTION OF THE ADMINISTRATOR

Western Pacific

(Region)

Floyd O. Goodyear

(Signature)

Acting Manager, LAS FSDO

September 19, 1994

(Date)

(Title)



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

CERTIFICATE OF WAIVER OR AUTHORIZATION

ISSUED TO

HELI USA, INC.

ADDRESS

275 EAST TROPICANA AVE.  
LAS VEGAS, NV 89109

This certificate is issued for the operations specifically described hereinafter. No person shall conduct any operation pursuant to the authority of this certificate except in accordance with the standard and special provisions contained in this certificate, and such other requirements of the Federal Aviation Regulations not specifically waived by this certificate.

OPERATIONS AUTHORIZED

In accordance with FAR 93.301 thru FAR 93.317 and SFAR 50-2, to conduct flight operations within the Grand Canyon Special Flight Rules Area.

Document Control No. 19-FSDO-073

LIST OF WAIVED REGULATIONS BY SECTION AND TITLE

NONE

STANDARD PROVISIONS

1. A copy of the application made for this certificate shall be attached to and become a part hereof.
2. This certificate shall be presented for inspection upon the request of any authorized representative of the Administrator of the Federal Aviation Administration, or of any State or municipal official charged with the duty of enforcing local laws or regulations.
3. The holder of this certificate shall be responsible for the strict observance of the terms and provisions contained herein.
4. This certificate is nontransferable.

NOTE ---This certificate constitutes a waiver of those Federal rules or regulations specifically referred to above. It does not constitute a waiver of any State law or local ordinance.

SPECIAL PROVISIONS

Special Provisions Nos. 1 to 8 inclusive, are set forth on the ~~reverse~~ <sup>"See Attached" ☒</sup> side hereof.

This certificate is effective from May 1, 1999 to January 31, 2000, inclusive, and is subject to cancellation at any time upon notice by the Administrator or his authorized representative.

Western Pacific  
(Region)

April 29 1999  
(Date)

BY DIRECTION OF THE ADMINISTRATOR

Howard J. Vaughn  
(Signature)

Manager, Las Vegas FSDO  
(Title)



Whichever tour you choose, you're always guaranteed an adventure of a lifetime.

**North Canyon Tour** - This exciting tour puts you in the action with a front-row seat to this natural wonder of the world. You'll marvel at the canyon's legendary beauty as you sit back and relax in the comfort of our newly designed aircraft. You could spend the entire day walking about the canyon and not see a fraction of the sights you'll enjoy in this 25-30-minute tour.

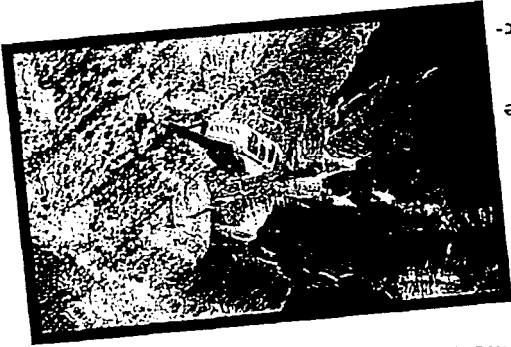
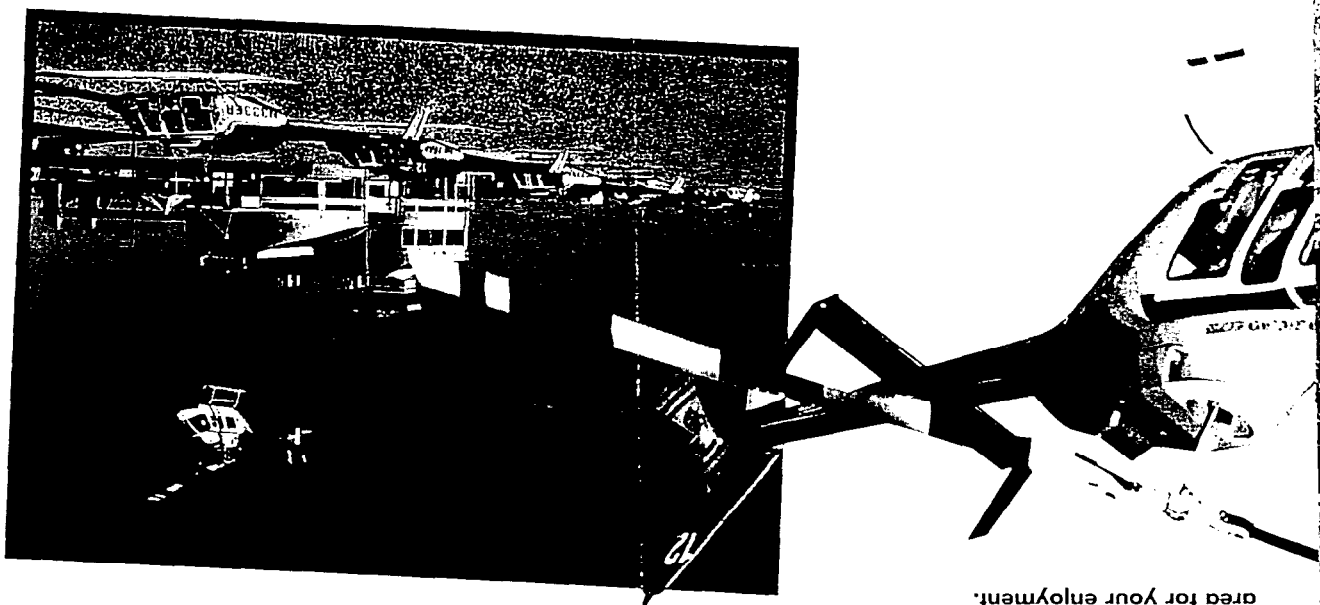
**Imperial Tour** - Embark on this 40-45-minute tour of the Eastern Grand Canyon that combines with the renowned beauty of the North Canyon tour. The spectacular views of the Painted Desert and Colorado River alone make this tour worth its weight in gold. With so much to see and experience, the Eastern Canyon tour is as unique as it is beautiful.

**Havasupai Daytime/Overnight Excursions** - Truly the pinnacle of high adventure, this exclusive tour allows you to enter into the unique world of the Havasupai Indians. Located at the bottom of the Grand Canyon, this village boasts spectacular waterfalls and legendary views that can only be found here. An optional Indian-guided tour on horseback will take you to the (00) of the waterfalls. Step back into the Old West, and see for yourself why it's named Havasupai, "People of the Blue-Green Water." Words cannot do justice to the beauty of this landscape--it really has to be seen to be believed. But, remember, only Papillon flies to this breathtaking location, so reserve your trip today.

\*Flight times may vary according to wind and weather conditions.

### Location:

Papillon's new, state-of-the-art heliport is conveniently located just off Highway 64, inside the North Entrance to the Grand Canyon Airport. It features first-rate amenities, including an interpretive center, gift shop and rest area for your enjoyment.



# Papillon Grand Canyon Helicopters

A 15-minute  
flight takes you  
to the top of the  
canyon



# PAPILLON GRAND CANYON HELICOPTERS AIR TOURS

NORTH CANYON      adult 94.00 + 5.00 tax = \$99.00 total  
                              child 75.00 + 5.00 tax = \$80.00 total

IMPERIAL          adult 154.00 + 5.00 tax = \$159.00 total  
                              child 123.00 + 5.00 tax = \$128.00 total

## TOUR DESCRIPTIONS:

North Canyon Tour; Experience the magnitude of the Grand Canyon's size and it's splendor of ever changing color in a perspective incomparable to any other method of seeing this Wonder of the World". In this 30 minute tour you'll view both North Rim and the South Rim, the Colorado River and as well as the widest and deepest part of the Grand Canyon.

Imperial Tour. Our Imperial tour includes all the features of the North Canyon tour plus the added beauty of the Eastern portion of the Grand Canyon. While over the East Rim, you will view parts of the Painted Desert and the Confluence of the Colorado River. The Eastern area considered to be the most geographically dramatic and colorful part of the Grand Canyon,

\* **Havasupai Air & Ground Excursion:** Papillon's exclusive six hour excursion departs once a day at 9:40 AM. You will fly over the spectacular Kaibab Plateau to the Havasupai Indian Reservation, where you will be greeted by the Supai Native Americans and given a guided horse back tour to the Navajo Falls, Havaou Falls, and Mooney Falls. Once you arrive at the falls, you have approximately three and half hours of leisure time to explore, hike and swim. Upon your departure from the Havasupai Indian Village, your flight will take you over the Western portion of the Grand Canyon for an extraordinary view of both the North Rim and South Rim continuing along the Dragon Corridor.

AIR PORTION      330.00 + 5.00 tax = \$335.00 per person  
 GROUND PORTION\* ..... = \$105.00 per person"  
 TOTAL PER PERSON = \$440.00

\*NOTE: All ground fees must be paid directly to the Havasupai Reservation upon arrival and MUST BE PAID in MASTER TRAVELERS CHECKS CARDS or CASH ONLY. \$100.00 deposit is required per person when booking this excursion. Meals are not included. No child fares are offered. All rates are subject to change without notice.

We also offer overnight excursions to the Havasupai Reservation. Additional costs are based on the number of people in one room (4 maximum). Please call for Current rates on rooms at (520)448-2201.

For any of the tours described above, you may call 1-800-528-2418 to make reservations. You may also fax to (520) 638-3235.

call to book 24 hrs in advance

\* cancel 24 hrs in advance

NARRATION BY PILOT.

FLIGHT TIME 45 MINUTES. EACH WAY. 40 MINUTE OVER  
 CASH CASH DAY CASH CASH CASH